



BILLING CODE: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 191209-0103]

RIN 0648-BI82

Clarification of Magnuson-Stevens Fishery Conservation and Management Act Regulation Regarding Monitor National Marine Sanctuary; Proposed Rulemaking

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to clarify its regulation which interprets other regulations to prohibit all fishing in the Monitor National Marine Sanctuary (Sanctuary). This is inconsistent with the applicable Sanctuary regulation that prohibits some, but not all, fishing activity in the Sanctuary. This proposed rule would revise regulations by removing the fishing prohibition text and cross-referencing the Sanctuary regulations instead.

DATES: Comments must be received by *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2019-0114, by the following method:

Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal:

<http://www.regulations.gov>.

Instructions: All comments received are a part of the public record and will generally be posted to

<http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments.

FOR FURTHER INFORMATION CONTACT: Chris Wright, Fishery Policy Analyst, 301-427-8504, or via e-mail chris.wright@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Sanctuary was designated as the nation's first national marine sanctuary in 1975. The site protects the wreck of the famed Civil War ironclad U.S.S. Monitor. The U.S.S. Monitor is located approximately 15 miles southeast of Cape Hatteras, North Carolina. The Sanctuary currently surrounds the shipwreck and consists of a vertical column of water one mile (1.61 km) in diameter (0.78 square miles

(2.02 square km) in size) extending from the seabed to the surface, the center of which is at 35°00'23" north latitude and 75°24'32" west longitude (15 CFR 922.60). The U.S.S. Monitor is in water depths of 240 feet (22.3 m).

Fishing in Federal waters off North Carolina is economically and socially vital to the state's residents, visitors, and coastal communities. Commercial and recreational fishing provides an important source of employment, income, recreation, and food, and is a significant driver for local tourism.

The United States claims sovereign rights and exclusive fishery management authority over fish within the U.S. Exclusive Economic Zone (EEZ), an area extending 200 nautical miles (370.4 km) from the seaward boundary of coastal states and U.S. territories (16 U.S.C. 1811(a)). Within the EEZ, Federal fishery management is conducted under the authority of the Magnuson Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1801 *et seq.*). NMFS, acting under authority delegated from the Secretary of Commerce, is responsible for managing fisheries pursuant to the MSA. To assist in fishery management, the MSA established eight regional fishery management councils that develop and submit fishery management plans to NMFS (16 U.S.C. 1852(a)) for specific

geographic areas. NMFS is responsible for developing fishery management plans for Atlantic highly migratory species (16 U.S.C. 1852(a)(3)).

This action affects regulations codified in the General Provisions for Domestic Fisheries (50 CFR part 600, subpart H). The proposed action would alleviate the potential for confusion regarding the fishing restrictions applicable to the Monitor National Marine Sanctuary or other sanctuaries. NMFS is taking this action pursuant to MSA § 305(d), which gives the Agency general authority to carry out fishery management plans adopted under the MSA.

Current Regulations Affecting Fishing

A Sanctuary regulation (15 CFR 922.61) includes specific restrictions applicable to fishing. Provisions that limit fishing and activities associated with fishing are: anchoring in any manner, stopping, remaining, or drifting without power at any time; diving of any type, whether by an individual or by a submersible; lowering below the surface of the water any grappling, suction, conveyor, dredging or wrecking device; and trawling.

In reviewing its regulations, NMFS noted that 50 CFR 600.705(f) cross-references the Sanctuary regulation, but includes broader language that prohibits "all fishing activity" in the Sanctuary.

The marine sanctuary regulations under 15 CFR part 924 were changed to 15 CFR part 922, on December 27, 1995 (60 FR 66875). The broader prohibition on all fishing at 50 CFR 600.705(f) appears to be inadvertent and the result of consolidation of regulations for specific fisheries into the General Provisions for Domestic Fisheries.

Proposed Action

This proposed action will remove text at 50 CFR 600.705(f), which states that all fishing in the Sanctuary is prohibited by Sanctuary regulations. This text is unnecessary and inconsistent with the Sanctuary's regulations and policies, which prohibit some, but not all, fishing activity in the Sanctuary. In 50 CFR 600.705(f), NMFS will retain an updated cross-reference to the Office of National Marine Sanctuaries' regulations at 15 CFR part 922.

Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the MSA and other applicable laws, subject to further consideration after public comment.

This proposed action has been determined to be not significant for the purposes of Executive Order 12866.

This rule is expected to be an Executive Order 13771 deregulatory action.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the factual basis for this determination follows.

This proposed rule removes an unnecessary fishery regulation that inadvertently included an overly broad interpretation of a Sanctuary regulation. The existing Sanctuary regulation will continue to prohibit stopping, remaining, or drifting without power in the Sanctuary, which significantly curtails most fishing activity in the Sanctuary. The proposed action could result in a slight increase in fishing activity in the Sanctuary, to the extent that NMFS's regulation had discouraged such activity.

This rule would remove an unnecessary regulation that applies to vessels (businesses) in the commercial harvesting and for-hire fishing industries. The SBA has established size criteria for all major industry sectors in the U.S., including fish harvesters. On December 29, 2015,

NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the SBA's current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016 (80 FR 81194, December 29, 2015).

On July 18, 2019, the SBA issued an interim final rule (84 FR 34261) effective August 19, 2019, that adjusted the monetary-based industry size standards (*i.e.*, receipts- and assets-based) for inflation for many industries. For fisheries for-hire businesses, the rule changes the small business size standard from \$7.5 million in annual gross receipts to \$8 million (See 84 Fed. Reg. at 34273) (adjusting NAICS 487990 (Scenic and Sightseeing Transportation, Other)).

Commercial fishing vessels whose owners possess valid commercial permit(s) for the South Atlantic EEZ (*e.g.*, Tunas General category, Atlantic Tunas Longline, Atlantic

Tunas Harpoon, Dolphin/Wahoo, and Atlantic Swordfish General Commercial) and harvest eligible species with hook and line or longline gear off the coast of North Carolina may be affected by this rule. As of May 7, 2019, 2633 vessels with valid commercial permits for the South Atlantic EEZ reported landings using hook and line or longline gear with 233 hailing from North Carolina. Of these, 82 of the 233 vessels landed in North Carolina in 2018. These 82 entities could be directly affected by this action.

The for-hire fleet is comprised of charter vessels, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The harvest of various species in the EEZ by for-hire vessels requires a charter vessel/headboat permit (e.g., Atlantic Highly Migratory Species Charter/Headboat, Atlantic Charter/Headboat for Dolphin Wahoo, South Atlantic Charter/Headboat for Pelagic Fish, and South Atlantic Charter/Headboat for Snapper/Grouper). The registration address for the Federal permit does not restrict operation to Federal waters off that state. As of September 19, 2019, there were 4904 vessels with valid or renewable for-hire permits. Of the 4904 vessels, 497 vessels were registered in North Carolina, with several entities owning multiple

vessels. Based on the registered permit address, 439 for-hire businesses eligible to fish in the EEZ off North Carolina could be directly affected by the proposed action.

The Sanctuary is relatively small, covering approximately one mile (1.61 km) in diameter (0.78 square miles in size; 2.02 square km). Limited data is available to determine how much harvesting activity is currently occurring or may occur in the Sanctuary if NMFS clarifies its regulation as proposed. As such, it is not possible to quantitatively determine the potential effects of this proposed rule. Considerable uncertainty exists regarding those potential effects. However, it is highly likely the economic benefits would be neutral to a slight increase. Vessels that might have been discouraged from fishing by NMFS's regulation may seek to fish in the Sanctuary, consistent with the Sanctuary regulations, if NMFS's rule is clarified as proposed. However, given the presence of similar or better fishing grounds closer to shore which are not subject to the Sanctuary's restrictions, vessels may not seek to fish in the Sanctuary.

NMFS assumes that the 82 commercial fishing vessels and 439 for-hire businesses, described above, are small entities and has determined that possible impacts of this proposed rule on those entities will not be significant.

Because this rule, if implemented, is not expected to have a significant adverse economic effect on the profits of a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 9, 2019.

Samuel D. Rauch III,
Deputy Assistant Administrator,
National Marine Fisheries Service

For the reasons stated in the preamble, 50 CFR part 600 is proposed to be amended as follows:

PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. In § 600.705, revise paragraph (f) to read as follows:

§ 600.705 Relation to other laws.

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(f) *Marine sanctuaries.* Regulations governing fishing activities inside the boundaries of national marine sanctuaries are set forth in 15 CFR part 922.

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[FR Doc. 2019-27052 Filed: 12/13/2019 8:45 am; Publication Date: 12/16/2019]